IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 31586 of 2006(I)

PETITIONER:

KANACHIPARUTHA MILK PRODUCERS
CO-OPERATIVE SOCIETY, LIMITED NO.P.96-D,
APCOS, KORENCHIRA P.O., PALAKKAD DISTRICT,
REP. BY ITS PRESIDENT.

BY ADV. SRI.JOICE GEORGE
SRI.BABY MATHEW

RESPONDENTS:

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1. THE DEPUTY DIRECTOR,
DIARY DEVELOPMENT DEPARTMENT, CIVIL STATION,
PALAKKAD.

2. E.V.ANICE, W/O.K.S.GEORGE,
KARAKKADAYIL HOUSE, KORENCHIRA P.O.,
PALAKKAD DISTRICT.

BY SENIOR GOVERNMENT PLEADER P.N. SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

W.P.(C). 31586/2006

Dated this 29th day of November, 2006

JUDGMENT

The second respondent was an employee, Secretary, of the writ petitioner, Society. The petitioner proceeded against her for mis-conduct, on various grounds. A Sub Committee constituted for that purpose, found the charges alleged against her had been proved. Therefore, the Sub Committee decided to dismiss her from the service of the writ petitioner, society, in continuation of the suspension in which she was placed into. The said recommendation of the Sub Committee was placed before the Board of Directors. Under resolution No.3 dated 26.5.2006, the Board of Directors had ratified the decision of the Sub Committee, terminating the service of the second respondent, the Secretary of the writ petitioner, under Rule 198(2) of the Kerala Co-operative Societies Rules, 1969, in short 'the Rules'.

2. The second respondent approached the first

respondent for interfering with the decision taken by the Board of Directors, as the said decision of the Board of Directors deprived her of an opportunity for preferring an appeal under Rule 198(4) of the Rules. Invoking the provisions contained under Rule 176 of the Rules, the first respondent had set aside the resolution No.3 of the Board of Directors dated 26.5.2006. Hence the society is before this Court, though this writ petition.

3. I heard the detailed submissions made, on questions of law and facts by the learned counsel for the petitioner as well as the learned Senior Government Pleader.

4. The order dated 7.11.2006 of the first respondent, invoking Rule 176 of the Rules, only set aside the resolution No.3 of the Board of Directors dated 26.5.2006. In effect, the enquiry report of the Sub Committee, recommending the termination of the service of the second respondent, Secretary, in continuation of her suspension, was not set aside, as could be seen from the records.

5. Under rule 198(2), a punishment can be awarded to an employee, only when the employee is

informed, in writing of all the grounds on which the punishment is proposed, and the action is initiated against him and also he had been afforded an opportunity, including personal hearing, to defend himself.

6. There is no material produced before me to show that the writ petitioner, society, or the Sub Committee had given any opportunity to the second respondent to defend himself, before a major punishment, the dismissal from service under rule 198(1)(h), had been imposed. Therefore, even when the order dated 7.11.2006 of the first respondent is allowed to be in force, it will only cancel the resolution No.3 of the Board of Directors dated 26.5.2006. But the Sub Committee report, finding the second respondent guilty of the allegations made against her and the termination of her service under rule 198(1)(h), will continue to be effective. In such situation, it will be appropriate for the Sub Committee to proceed under rule 198(2). An opportunity including the personal hearing, to defend herself, could be afforded before the imposition of the punishment.

7. In the above facts situation, I set aside the recommendation of the Sub Committee, imposing the punishment of terminating the second respondent from service, under rule 198(1)(h) and direct the Sub Committee to proceed against the writ petitioner, under rule 198(2) of the Rules, before imposing the punishment.

8. I make it clear that as the second respondent was under suspension, the proceedings hereinafter initiated shall be the continuation of the proceedings so far held and, therefore, the second respondent will continue to be under suspension and she is entitled for all the benefits, as per the provisions of the act and rules. However, the proceedings, in respect of the second respondent, shall be completed by the Sub Committee, within two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

J.M.JAMES
JUDGE

mrcs